

## **CHAPTER 17**

### **PUBLIC EMPLOYMENT RELATIONS COMMISSION APPEAL BOARD**

Current through May 17, 2004; 36 N.J. R. No. 10

#### **AUTHORITY**

N.J.S.A. 34:13A-5.9.

#### **SOURCE AND EFFECTIVE DATE**

R.2003 d.342, effective July 25, 2003.

See: 35 N.J.R. 1796(a), 35 N.J.R. 3834(a).

#### **CHAPTER EXPIRATION DATE**

Chapter 17, Public Employment Relations Commission Appeal Board, expires on July 25, 2008.

#### **CHAPTER HISTORICAL NOTE**

Chapter 17, Public Employment Relations Commission Appeal Board, was adopted as R.1983 d.310, effective August 1, 1983. See: 14 N.J.R. 903(a), 15 N.J.R. 1257(a).

Subchapter 3, Amount of Representation Fee in Lieu of Dues, and Subchapter 4, Review of Representation Fee in Lieu of Dues, were adopted as R.1987 d.248, effective June 15, 1987. See: 19 N.J.R. 196(a), 19 N.J.R. 1105(a).

Pursuant to Executive Order No. 66(1978), Chapter 17, Public Employment Relations Commission Appeal Board, was readopted as R.1988 d.301, effective June 8, 1988. See: 20 N.J.R. 891(a), 20 N.J.R. 1571(d).

Pursuant to Executive Order No. 66(1978), Chapter 17, Public Employment Relations Commission Appeal Board, was readopted as R.1993 d.322, effective June 7, 1993. See: 25 N.J.R. 1842(b), 25 N.J.R. 2907(a).

Pursuant to Executive Order No. 66(1978), Chapter 17, Public Employment Relations Commission Appeal Board, was readopted as R.1998 d.320, effective June 1, 1998. See: 30 N.J.R. 1214(a), 30 N.J.R. 2516(b).

Chapter 17, Public Employment Relations Commission, was readopted as R.2003 d.342, effective July 25, 2003. See: Source and Effective Date.

#### **CHAPTER TABLE OF CONTENTS**

##### **SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION**

- 19:17-1.1 Description of the Appeal Board
- 19:17-1.2 Staff of the Appeal Board
- 19:17-1.3 Delegation of authority to staff of the Division of Public Employment Relations, officers of the Appeal Board

##### **SUBCHAPTER 2. PROCEDURES**

- 19:17-2.1 Rules to be read in conjunction with the rules of the Office of Administrative Law

### **SUBCHAPTER 3. AMOUNT OF REPRESENTATION FEE IN LIEU OF DUES**

- 19:17-3.1 Designation of fiscal year  
19:17-3.2 Designation of dues year  
19:17-3.3 Annual notice to nonmembers; copy of demand and return system to public employer  
19:17-3.4 Amount of representation fee in lieu of dues; annual adjustment

### **SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE IN LIEU OF DUES**

- 19:17-4.1 Period for filing of requests for review  
19:17-4.2 Fees of nonmembers filing requests for review; escrow of amounts reasonably in dispute  
19:17-4.3 Time for completion of demand and return system  
19:17-4.4 Results of demand and return system, payment of interest on amounts returned  
19:17-4.5 Time for filing petitions with Appeal Board

## **SUBCHAPTER 1. DESCRIPTION OF ORGANIZATION**

### **19:17-1.1 Description of the Appeal Board**

The Public Employment Relations Commission Appeal Board (the "Appeal Board") is the board established by N.J.S.A. 34:13A-5.6 to consider petitions of appeal of public employees, who are not members of the employee organization which represents the employees' collective negotiations unit, concerning the amount of the representation fee in lieu of dues paid by the nonmember employees.

### **19:17-1.2 Staff of the Appeal Board**

The staff of the Appeal Board shall consist of the personnel of the Division of Public Employment Relations (N.J.S.A. 34:13A-5.1), and the Appeal Board may utilize the services of the personnel of the Division of Public Employment Relations as well as the offices and equipment of the said Division, to process those matters which come before it and to otherwise perform its functions pursuant to N.J.S.A. 34:13A-5.6.

### **19:17-1.3 Delegation of authority to staff of the Division of Public Employment Relations, officers of the Appeal Board**

When the personnel of the Division of Public Employment Relations are carrying out functions on behalf of the Appeal Board, it shall be understood that such personnel are acting as officers of the Appeal Board and that the Appeal Board has delegated all the powers necessary to permit the discharge of the duty or duties delegated.

## **SUBCHAPTER 2. PROCEDURES**

### **19:17-2.1 Rules to be read in conjunction with the rules of the Office of Administrative Law**

These rules are to be read in conjunction with the Uniform Administrative Procedure Rules of Practice (UAPRP), N.J.A.C. 1:1-1, and the rules of special applicability for hearings initiated in contested cases before the Public Employment Relations Commission Appeal Board, N.J.A.C. 1:20.

Amended by R.1987 d.248, effective June 15, 1987.

See: 19 N.J.R. 196(a), 19 N.J.R. 1105(a).

Added text "in contested cases"; substituted "N.J.A.C. 1:20" for "hereafter adopted by the Office of Administrative Law."

## **SUBCHAPTER 3. AMOUNT OF REPRESENTATION FEE IN LIEU OF DUES**

### **19:17-3.1 Designation of fiscal year**

(a) Every majority representative which collects a representation fee in lieu of dues shall establish a fiscal year system of accounting for the expenditures of such organization.

(b) The fiscal year may be the calendar year or any other 12 month period.

### **19:17-3.2 Designation of dues year**

(a) Every majority representative which collects a representation fee in lieu of dues shall establish a dues year.

(b) The dues year may be the calendar year or any other 12 month period, except that the dues year may not commence prior to the start of the fiscal year.

### **19:17-3.3 Annual notice to nonmembers; copy of demand and return system to public employer**

(a) Prior to the commencement of payroll deductions of the representation fee in lieu of dues for any dues year, the majority representative shall provide all persons subject to the fee with an adequate explanation of the basis of the fee, which shall include:

1. A statement, verified by an independent auditor or by some other suitable method of the expenditures of the majority representative for its most recently completed fiscal year. The statement shall set forth the major categories of expenditures and shall also identify expenditures of the majority representative and its affiliates which are in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment or applied toward the cost of benefits only available to members of the majority representative.

2. A copy of the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6, including instructions to persons paying the representation fee in lieu of dues as to how to request review of the amount assessed as a representation fee in lieu of dues.

3. The name and address of the financial institution where the majority representative maintains an account in which to escrow portions of representation fees in lieu of dues which are reasonably in dispute. The interest rate of the account in effect on the date the notice required by (a) above is issued shall also be disclosed.

4. The amount of the annual representation fee in lieu of dues, or an explanation of the formula by which the representation fee is set, and the schedule by which the fee will be deducted from pay.

(b) The majority representative shall provide a copy of the demand and return system referred to in (a)2 above to the public employer.

Amended by R.1993 d.322, effective July 6, 1993.  
See: 25 N.J.R. 1842(b), 25 N.J.R. 2907(a).

#### **19:17-3.4 Amount of representation fee in lieu of dues; annual adjustment**

(a) The maximum representation fee in lieu of dues assessed nonmembers in any dues year shall be the lower of:

1. Eighty-five percent of the regular membership dues, fees and assessments charged by the majority representative to its own members.

2. Regular membership dues, fees and assessments, charged by the majority representative to its own members, reduced by the percentage

amount spent during the most recently completed fiscal year by the majority representative and any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative on benefits available to or benefitting only its members and in aid of activities or causes of a partisan political or ideological nature only incidentally related to the terms and conditions of employment. The amount shall be based upon the figures contained in the statement provided nonmembers prior to the start of the dues year in accordance with N.J.A.C. 19:17-3.3(a)1.

(b) Every majority representative shall annually recalculate its representation fee in lieu of dues in accordance with (a) above.

#### **SUBCHAPTER 4. REVIEW OF REPRESENTATION FEE IN LIEU OF DUES**

##### **19:17-4.1 Period for filing of requests for review**

(a) Each nonmember shall be afforded a period of at least 30 days after the majority representative has provided the information described in N.J.A.C. 19:17-3.3(a) within which to file a request for review of the amounts assessed by the majority representative as the nonmember's representation fee in lieu of dues.

(b) Any request for review of a representation fee in lieu of dues, filed within the time period set by the majority representative in accordance with (a) above, will be deemed effective to entitle the employee to a return of any portion of the employee's representation fee in lieu of dues which is determined to be non-chargeable to the employee.

##### **19:17-4.2 Fees of nonmembers filing requests for review; escrow of amounts reasonably in dispute**

(a) Prior to receiving representation fees in lieu of dues in any dues year, the majority representative shall open an interest-bearing escrow account in any financial institution in which to place all or part of representation fees in lieu of dues to be collected from nonmembers who have filed timely requests for review pursuant to N.J.A.C. 19:17-4.1.

(b) The majority representative shall place in escrow any amount which is reasonably in dispute.

##### **19:17-4.3 Time for completion of demand and return system**

(a) Proceedings in the demand and return system established by the majority representative pursuant to N.J.S.A. 34:13A-5.6 shall be completed within

60 days after the commencement of payroll deductions of representation fees in lieu of dues for the current dues year.

(b) After 60 days from the commencement of payroll deductions of representation fees in lieu of dues for the current dues year, or the completion of demand and return system proceedings, whichever date is earlier, any nonmember who has a pending request for review shall be deemed to have exhausted demand and return system proceedings pursuant to N.J.A.C. 1:20-4.1 and N.J.A.C. 19:17-4.5 and may file a petition of appeal with the Appeal Board in accordance with N.J.A.C. 1:20-6.1.

(c) Any majority representative which has commenced, but has not completed, demand and return system proceedings within the time set forth in (a) above shall continue such proceedings to completion, notwithstanding the filing of petitions with the Appeal Board by nonmembers who have requests for review pending with the majority representative, unless all pending requests have been withdrawn or presented to the Appeal Board.

(d) This section shall also apply to demand and return system proceedings conducted by any affiliate of the majority representative which receives any portion of the representation fees in lieu of dues paid or payable to the majority representative.

**19:17-4.4 Results of demand and return system, payment of interest on amounts returned**

(a) On completion of demand and return system proceedings, a written decision shall be served on each nonmember whose request for review of the fee is involved in such proceeding.

(b) If the demand and return system proceedings results in a determination that the amount charged to the nonmember was in excess of the amount allowed by statute, such excess amount shall accompany the written decision.

(c) If the amount returned is equal to or less than the portion of the nonmember's representation fee held in the majority representative's escrow account, then the actual interest earned on the amount returned shall be paid to the nonmember.

(d) If the amount returned is greater than the portion of the nonmember's representation fee held in the majority representative's escrow account, then the nonmember will receive interest payable at the judgment rate for the entire amount of the rebate. (See N.J. Court Rules, R. 4:42-11.)

**19:17-4.5      Time for filing petitions with Appeal Board**

A petition of appeal seeking review by the Appeal Board of a representation fee in lieu of dues charged by a majority representative pursuant to N.J.S.A. 34:13A-5.5 shall be filed within six months after payroll deductions to collect the petitioner's fee have commenced.

## **CHAPTER 20**

### **HEARINGS BEFORE THE PUBLIC EMPLOYMENT RELATIONS APPEAL BOARD**

#### **Authority**

N.J.S.A. 52:14F-5(e), (f) and (g).

#### **Source and Effective Date**

R.1997 d.158, effective March 10, 1997.

See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

#### **Executive Order No. 66(1978) Expiration Date**

Chapter 20, Hearings before the Public Employment Relations Appeal Board, expires on March 10, 2002.

#### **Chapter Historical Note**

Chapter 20, Rules of Special Applicability for Hearings before the Public Employment Relations Appeal Board, was adopted as R.1983 d.305, effective August 1, 1983. See: 14 N.J.R. 862(a), 15 N.J.R. 1243(b). Chapter 20 was repealed and a new Chapter 20, Hearings Before the Public Employment Relations Appeal Board, was adopted by R.1987 d.200, effective May 4, 1987 (operative July 1, 1987). See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a).

Pursuant to Executive Order No. 66(1978), Chapter 20 was readopted as R.1992 d.213, effective April 21, 1992. See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Pursuant to Executive Order No. 66(1978), Chapter 20 was readopted as R.1997 d.158, effective March 10, 1997. See: Source and Effective Date.

## **CHAPTER TABLE OF CONTENTS**

### **SUBCHAPTER 1. APPLICABILITY**

1:20-1.1 Applicability

### **SUBCHAPTER 2. DEFINITIONS**

1:20-2.1 Definitions

### **SUBCHAPTER 3. COMMENCEMENT OF PROCEEDING**

1:20-3.1 Commencement of proceeding before the Appeal Board

1:20-3.2 Who may commence a proceeding before the Appeal Board



## SUBCHAPTERS 4 THROUGH 5. (RESERVED)

### SUBCHAPTER 6. PLEADINGS

- 1:20-6.1 Time for filing of petition; exhaustion of demand and return system
- 1:20-6.2 Time for filing answer
- 1:20-6.3 Contents of petition
- 1:20-6.4 Contents of answer

### SUBCHAPTER 7. SERVICE, FILING AND POSTING OF PETITION

- 1:20-7.1 Filing of petition and copies
- 1:20-7.2 Service of petition upon majority representative
- 1:20-7.3 Petition to public employer
- 1:20-7.4 Filing of answer and copies
- 1:20-7.5 Service of answer upon petition

### SUBCHAPTER 8. TRANSMISSION OF CASES

- 1:20-8.1 Transmission of cases to the Office of Administrative Law

### SUBCHAPTER 9. NOTICES

- 1:20-9.1 Notice of filing; employer posting

## SUBCHAPTERS 10 THROUGH 13. (RESERVED)

### SUBCHAPTER 14. CONDUCT OF CASES

- 1:20-14.1 Nature of hearing
- 1:20-14.2 Burden of proof

### SUBCHAPTER 15. EVIDENCE

- 1:20-15.1 Evidence of demand and return proceedings

## SUBCHAPTERS 16 THROUGH 17. (RESERVED)

### SUBCHAPTER 18. CONCLUSION OF HEARING

- 1:20-18.1 Oral argument on exceptions
- 1:20-18.2 Motion to reopen

## SUBCHAPTERS 19 THROUGH 21. (RESERVED)

### **SUBCHAPTER 1. APPLICABILITY**

#### **1:20-1.1 Applicability**

The rules in this chapter shall apply to any hearing initiated before the Public Employment Relations Commission Appeal Board pursuant to P.L. 1979, c.477 (N.J.S.A. 34:13A-5.5 et seq.). Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative

Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

## **SUBCHAPTER 2.7 DEFINITIONS**

### **1:20-2.1 Definitions**

(a) "Appeal Board" means the Public Employment Relations Commission Appeal Board established by N.J.S.A. 34:13A-5.6 to consider complaints concerning the amount of fees paid by nonmembers who pay a representation fee in lieu of dues.

(b) "Demand and return system" means the procedure established and maintained pursuant to N.J.S.A. 34:13A-5.6 by a majority representative to provide a public employee who pays a representation fee in lieu of dues the right to demand and receive from the majority representative that portion of the fee returnable under the circumstances as described by N.J.S.A. 34:13A-5.5(c).

(c) "Employer" means, for purposes of these rules only, the public employer which is signatory to the agreement requiring payment by the petitioner nonmember of representation fee in lieu of dues.

(d) "Nonmember" means a public employee who is not a member of the majority representative which represents the employee's collective negotiations unit but who pays a representation fee in lieu of dues to the majority representative.

(e) "Petition" means the document described in N.J.A.C. 1:20-6 and which initiates a complaint before the Appeal Board about the amount of representation fee in lieu of dues.

(f) "Petitioner" means the nonmember who is filing a petition.

(g) "Representation fee" means the fee in lieu of dues defined in N.J.S.A. 34:13A-5.5, deducted from a nonmember's wages or salary and paid to the majority representative of the nonmember's unit.

(h) "Respondent" means the majority representative which represents the petitioner's collective negotiations unit and which receives petitioner's representation fee.

## **SUBCHAPTER 3. COMMENCEMENT OF PROCEEDING**

### **1:20-3.1 Commencement of proceeding before the Appeal Board**

A nonmember may initiate a proceeding before the Appeal Board to review the amount of a representation fee in lieu of dues by filing a petition with the Appeal Board pursuant to this chapter.

### **1:20-3.2 Who may commence a proceeding before the Appeal Board**

A petition may be filed by any nonmember public employee who pays a representation fee in lieu of dues to a majority representative. Neither a public employer nor a majority representative may file a petition.

## **SUBCHAPTERS 4 THROUGH 5. (RESERVED)**

### **SUBCHAPTER 6. PLEADINGS**

#### **1:20-6.1 Time for filing of petition; exhaustion of demand and return system**

(a) At any time after the nonmember has exhausted, or has made a good faith attempt to exhaust, the demand and return system required to be maintained by the majority representative, the nonmember may file a petition with the Appeal Board.

(b) If during the administrative processing of the petition of appeal, it is determined that the majority representative's demand and return system has either not been utilized to resolve the dispute or that the demand and return proceeding has not been completed, the Appeal Board may take whatever action it deems appropriate, including but not limited to dismissing the petition of appeal, staying the proceedings before the Board pending the completion of the majority representative's demand and return system, or continue to process the petition.

(c) A nonmember of a majority representative who has a claim pending in the majority representative's demand and return system may intervene in a proceeding before the Appeal Board involving the same majority representative, collective negotiations agreement, public employer and the same period of time, notwithstanding that the nonmember has not yet exhausted the majority representative's demand and return system.

#### **1:20-6.2 Time for filing answer**

No later than 20 days from the date of service of the petition upon the respondent by the petitioner, the respondent shall file with the Appeal Board and serve upon the petitioner an answer to the petition. For good cause, the Appeal Board may extend the time for answer. Failure to file and serve an answer on time may result in a default judgment against the respondent.

### **1:20-6.3        Contents of petition**

(a)        A petition shall be in writing and signed by the nonmember(s) making the complaint. More than one nonmember in the same negotiations unit may sign a petition.

(b)        A blank form for filing such a petition will be supplied upon request. Requests shall be addressed to: Public Employment Relations Commission Appeal Board, P.O. Box 429, Trenton, NJ 08625.

(c)        The petition shall contain the following:

1.        The full name, address and telephone number of the nonmember filing the petition and, where applicable, the name, address and telephone number of any authorized representative;

2.        The full name and address of the majority representative of the nonmember's collective negotiations unit;

3.        The full name and address of the public employer of the nonmember filing the petition;

4.        The amount of the representation fee in lieu of dues and, where known, the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members;

5.        A statement of the grounds for the nonmember's belief that the representation fee in lieu of dues is excessive or improper, including a brief recitation of the facts, if any, which give rise to the belief that the fee is excessive. It shall be sufficient for the petitioner to state opposition either to all expenditures of a political or ideological nature only incidentally related to the terms and conditions of employment, or to expenditures applied toward the costs of any benefits available only to members of the majority representative, or to both; and

6.        A statement as to whether the nonmember filing the petition has exhausted the majority representative's demand and return system and the result of that proceeding. If the result of that proceeding was in written form, a copy of the writing should be appended to the petition.

### **1:20-6.4        Contents of answer**

(a)        An answer shall be in writing and signed by a representative of the respondent.

(b)        An answer shall contain the following:

1. A statement of the amount of the regular membership dues, initiation fees and assessments charged by the majority representative to its own members in the petitioner's collective negotiations unit;

2. A statement of the representation fee in lieu of dues charged the petitioner;

3. A description of the disposition of the petitioner's demand and return system proceeding. A copy of any written decision or result of that proceeding shall be appended as an exhibit to the answer, unless it has been appended to the petition;

4. A clear and concise statement which specifically admits, denies or explains any factual allegations contained in the petition; and

5. Any affirmative defenses to the legal and factual allegations of the petition.

(c) Attached to the answer shall be:

1. A copy of the collective negotiations agreement or other written agreement with the public employer of the petitioner which provides for the payment of the representation fee in lieu of dues; and

2. A copy of the demand and return procedures established by the majority representative.

## **SUBCHAPTER 7. SERVICE, FILING AND POSTING OF PETITION**

### **1:20-7.1 Filing of petition and copies**

A petitioner shall file an original and four copies of the petition with the Appeal Board.

### **1:20-7.2 Service of petition upon majority representative**

Upon filing of a petition, the petitioner shall serve a copy of the petition and any attached documents upon the respondent named in the petition. The petitioner shall file a proof of service with the Appeal Board.

### **1:20-7.3 Petition to public employer**

Upon receipt of a petition, the Appeal Board shall forthwith provide a copy of the petition to the public employer, normally posted. The copies of the petition shall remain posted for a period of 30 days.

#### **1:20-7.4 Filing of answer and copies**

(a) The respondent shall file an original and four copies of the answer with the Appeal Board.

(b) The respondent shall file two copies of the documents required by N.J.A.C. 1:20-6.4(c).

#### **1:20-7.5 Service of answer upon petition**

Upon filing the answer, the respondent shall serve a copy of the answer and of the documents required by N.J.A.C. 1:20-6.4(c) upon the petitioner. The respondent shall file proof of service with the Appeal Board.

### **SUBCHAPTER 8. TRANSMISSION OF CASES**

#### **1:20-8.1 Transmission of cases to the Office of Administrative Law**

In addition to the completed transmittal form, two copies of the petition and answer and other appropriate papers, the Appeal Board shall transmit to the Office of Administrative Law copies of the parties' proof of service of the petition and answer.

### **SUBCHAPTER 9. NOTICES**

#### **1:20-9.1 Notice of filing; employer posting**

(a) In addition to the requirements of N.J.A.C. 1:1-9.4(a), a copy of the notice of filing shall be sent by the Office of Administrative Law to the public employer of the petitioner.

(b) The public employer shall post such notice at locations where notices to employees in the petitioner's collective negotiations unit are normally posted. The notice shall remain posted for a period of 30 days.

### **SUBCHAPTERS 10 THROUGH 13. (RESERVED)**

### **SUBCHAPTER 14. CONDUCT OF CASES**

#### **1:20-14.1 Nature of hearing**

The hearing shall be a plenary de novo proceeding.

#### **1:20-14.2 Burden of proof**

Pursuant to N.J.S.A. 34:13A-5.6, the burden of proof shall be on the majority representative.

## **SUBCHAPTER 15. EVIDENCE**

### **1:20-15.1 Evidence of demand and return proceedings**

The record, or any portion of it, developed at the demand and return system proceeding may be introduced as evidence by either party, subject to the general rules of evidence contained in N.J.A.C. 1:1-15.

## **SUBCHAPTERS 16 THROUGH 17. (RESERVED)**

## **SUBCHAPTER 18. CONCLUSION OF HEARING**

### **1:20-18.1 Oral argument on exceptions**

(a) As part of any written exceptions to an initial decision, a party may file a written request for oral argument on the exceptions before the Appeal Board. The written request shall be served, along with the exceptions, upon the other parties to the hearing.

(b) If the Appeal Board grants the request for oral argument, the Appeal Board shall give each party at least five days notice of the date of the argument.

(c) Only issues and evidence of record at the hearing may be considered at the oral argument. No new issues or evidence may be presented.

### **1:20-18.2 Motion to reopen**

A party to a proceeding before the Appeal Board may, because of extraordinary circumstances, move to reopen the matter after the Appeal Board decision has been rendered. The movant shall state with particularity the grounds claimed and, where applicable, shall specify the portion of the record relied upon. Any motion pursuant to this section shall be filed within 15 days after service of the Appeal Board decision. Copies shall be served on the parties of record, and a statement of service shall be filed with the motion papers. The filing and pendency of a motion for reconsideration shall not operate to stay the effectiveness of the Appeal Board decision unless otherwise ordered by the Appeal Board. A motion to reopen need not be filed to exhaust administrative remedies.

## **SUBCHAPTERS 19 THROUGH 21. (RESERVED)**